

Legal Risks and Countermeasures for Ocean Engineering Contracts

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Abstract: With the rapid development of Marine economy, Marine engineering is springing up vigorously. In order to adapt to the development trend, Marine engineering project management is actively exploring relevant theories of Marine engineering project management. The understanding of the importance of contract management in the Marine engineering community is also increasing, and the Marine engineering cases have both the commonness of general construction projects and the characteristics of maritime affairs. To maintain the economic interests of ocean engineering, strengthen the competitiveness of ocean engineering construction in the market, do a good job in the management of ocean engineering, in order to ensure the quality of the project, so as to avoid unnecessary disputes and contradictions, and better promote the sustainable development of ocean and protect the Marine environment, it is of great significance to the development of Marine engineering market in our country.

1. Introduction

The concept of "ocean engineering" was put forward in the 1960s. In the past 60 years, with the exploitation and utilization of ocean oil, submarine natural gas and other energy sources, the content of ocean engineering has gradually enriched and enriched. In the process of bidding for Marine engineering, normative requirements, acceptance standards, work content, time limit and so on have been clearly defined.^[1] With the fierce market competition, there are more and more problems such as subcontracting at low price and changing the contract content.

2. The necessity of perfecting the ocean engineering contract

In order to achieve the established project objectives, ensure the quality and duration of the ocean construction project, strengthen the project and its connection at each stage of the ocean engineering, and improve the overall management level of the ocean project to establish an effective project management system. The continuous and stable development of Marine contracts is the result of the continuous improvement of China's market, and it is also the basic code of conduct for enterprises in Marine projects. In actual operation, it is also necessary for all relevant departments and units to cooperate and jointly promote the implementation of the dispute resolution mechanism for Marine construction contracts.

3. Existing legal problems in ocean engineering contracts

3.1. The influence of bidding behavior on the validity of ocean engineering contract

According to the law, construction projects must be tendering, and if the bidding is not conducted or the winning bid is invalid, it shall be deemed invalid according to the provisions of the first paragraph of Article 153 of the Civil Code.^[2] It is obvious that the public bidding activities of Marine construction units belong to the situation that bidding must be carried out without bidding.^[3] If the tenderer, in violation of the provisions of this Law, negotiates with the bidder on the substantive contents of the bid price, bid plan, etc. for a project that is subject to tender according to law, and such act affects the result of winning the bid, the winning bid shall be invalid. The Marine engineering construction enterprise and the construction unit signed the cooperation agreement before the bidding activity, and started the construction before the bidding. The above behaviors also affected the winning result in the end, so the winning bid of the Marine engineering construction enterprise is obviously invalid. In other words, the labeling behavior of Marine engineering construction enterprises and construction units has seriously damaged the fair and just bidding order, so the contract signed should also be deemed invalid according to law. In this paper, it is suggested that Marine engineering construction enterprises should pay close attention to the legality of bidding behavior, so as to avoid their own non-standard market competition behavior leading to the invalidity of the signed contract, which will cause significant legal risks to enterprises.

3.2. The influence of ocean engineering subcontracting behavior on contract validity

Subcontracting of a project means that after contracting a project, the contractor should perform the responsibilities and obligations stipulated in the contract, but the contractor contracts the whole project or dismemberes all the contracted projects, and then transfers them to other units or individuals in the name of subcontracting. According to Article 28 of the Construction Law, contractors are prohibited from subcontracting all construction projects they have contracted to others. It is prohibited for a contractor to directly transfer all the construction projects contracted to another person in the name of subcontracting.

According to the law, a construction contract signed by a contractor with another person due to subcontracting or illegal subcontracting of the construction project shall be deemed invalid. In other words, the internal contract agreement signed by the contractor and others is an invalid contract.^[4] Then, is the contract for the construction of Marine engineering between the contractor and the employer invalid? If the employer is not aware of the contract, and the construction contract signed by the Marine engineering construction enterprise does not violate the mandatory provisions of laws and administrative regulations, then the Marine construction contract is a valid contract. Marine engineering construction enterprises may be subject to administrative penalties including but not limited to qualification reduction, confiscation of illegal gains, fines and other administrative penalties by the construction administrative departments due to their subcontracting behavior. It is suggested that Marine engineering construction enterprises want to reduce business risks, while not violating the law, they can construct the main part of the project by themselves, and hand over other sub-projects to other professional contractors through legal subcontracting. In this way, most of the business risks are transferred, and the illegal behavior of project subcontracting will not cause significant legal risks to enterprises.

3.3. Refuse to pay for the project on the grounds of quality problems

After the construction unit receives the project completion report, the project leader of the

construction unit shall organize supervision, construction, design, survey, etc., and the project leader of the unit shall carry out the acceptance inspection of the unit project. That is to say, the main body of the construction project completion acceptance shall be the owner, but the prerequisite is that the contractor has passed the self-inspection, qualified quality, and passed the pre-acceptance organized by the chief supervision engineer, and submitted the completion report of the project to the owner. Under such conditions, if the Employer accepts the completion report but fails to exercise the main responsibility of organizing the completion acceptance, the quality responsibility at this time shall be borne by the Employer himself. Second, if the project has been completed, the Developer uses the construction project without authorization without the contractor submitting the completion report to the Developer and the Developer organizing the completion acceptance.^[5] According to the latest judicial interpretation, if the construction project has not been completed and accepted, and the employer uses it without authorization, and claims rights on the grounds that the quality of the part used does not meet the agreement, the people's court will not support it. However, the contractor shall, within the reasonable use period of the construction project, bear civil liability for the quality of the foundation works and the main structure. That is to say, in the case of unfinished acceptance, the employer can no longer refuse to pay the contractor the project money on the grounds that part of the quality does not meet the agreement after the construction project is used without authorization.^[6] The Employer can only require the contractor to assume quality warranty responsibility for the quality of the foundation and foundation works and the main structure works in accordance with the relevant provisions of judicial interpretation.

Then how should the contractor who terminates the contract during the construction prove that part of the quality has been qualified? As we all know, the quality of construction projects is the highest value they pursue. The prerequisite for the contractor to claim the project payment from the Employer is to prove that the completed construction project conforms to the quality standards agreed in the contract and the compulsory quality standards of the state. For the completed project contractor, the unit project quality acceptance record form shall be provided, and it shall be noted that the record form shall be stamped with the official seal of the construction unit, survey unit, design unit, construction unit, supervision unit and other five main units. The contractor who rescinds the contract in the course of construction shall provide quality acceptance records of the completed works.^[7] If the construction unit is unable to provide the above quality acceptance records, or the records provided are incomplete due to the reasons of the owner, in judicial affairs, it is suggested that the contractor should wait for the subsequent construction unit to enter the construction and complete the corresponding quality acceptance after leaving the site, and then claim the project payment to the Owner. In this case, the construction activities of the Developer and the subsequent construction unit shall be deemed to have recognized the quality of the contractor's completed works by the Developer and the subsequent construction unit.

Thus, the contractor may claim the project price for the completed part of the project from the Employer. First, the contractor shall fix the evidence for the handover of the completed project, and it is suggested that a third-party notary agency be invited to carry out on-site notarization, so as to facilitate the dispute in the later project settlement as effective evidence to determine the cost of the completed project. Second, after the termination of the unfinished construction contract, if the contractor wants to claim the price of the project, he shall provide evidence to prove that the quality of the completed works conforms to the quality standards of the contract. That is, the contractor's completed works must pass the quality acceptance of construction works. For example, the contractor shall obtain the subdivision inspection batch acceptance data, which shall be signed or sealed by all parties to the project. Third, the contractor shall transport the engineering technology and business materials stored on site away from the project site, so as to facilitate the negotiation or litigation between the contractor and the employer in the later stage. Fourth, the contractor shall

check and fix the evidence of the construction materials, construction machinery and equipment, materials and equipment that have been ordered and have not yet been delivered, etc. stored on the project site, so as to facilitate settlement with the Employer after departure. Fifth, the contractor should complete as soon as possible the preparation of detailed settlement documents for the completed works, especially for visa claims outside the scope of the contract, which is usually the main point of dispute between the contracting parties. If the contractor fails to provide the confirmation information of the project quantity or project price, he will face the legal and commercial risks of not being able to obtain the corresponding project price. Sixth, since the contract is terminated unilaterally, the contractor needs to collect and sort out the evidence of the employer's breach of contract, prepare sufficient evidence for possible litigation or arbitration, and safeguard its legitimate rights and interests.

4. Suggestions for improving Marine engineering in our country

4.1. The perfection of legal norms

It is suggested to further improve the relevant laws and regulations in the field of ocean engineering contracts, clarify the rights and obligations of the parties to the contract, and the procedures and methods of dispute resolution. At the same time, it is also necessary to take into account the impact of special factors such as the Marine environment on the contract to ensure that legal norms can adapt to the changing needs of Marine engineering.

According to the characteristics of Marine engineering construction, the relevant provisions of the existing contract law are revised and improved, and the provisions on the conclusion, performance, alteration, rescission and termination of Marine engineering construction contracts are clarified. The legislature needs to formulate special regulations on the management of Marine engineering construction contracts, and make detailed provisions on the subject qualification, contract content, project quality, production safety, environmental protection and other aspects of Marine engineering construction contracts. In the judicial trial of Marine engineering construction contract disputes, the judicial organs should improve the judicial efficiency and protect the legitimate rights and interests of the parties. We should establish a professional trial team for Marine engineering construction contract disputes, improve the professional quality of the team of judges, and ensure the quality of case hearing. Industry associations are encouraged to develop model contracts for Marine engineering construction to provide standardized contract text reference for parties. Trade associations should strengthen legal training and guidance for member units to improve the overall quality of the industry's rule of law. At the same time, strengthen the publicity and popularization of the legal knowledge of Marine engineering construction contracts, and improve the legal awareness and law-abiding awareness of all parties. Judicial and administrative organs should strengthen the publicity of Marine engineering construction contract disputes and guide the parties to protect their rights according to law.

4.2. Clarity of risk sharing mechanism

The contract shall specify the risks borne by the parties in the process of project implementation, and establish a reasonable risk sharing mechanism. This includes a clear definition of liability and compensation liability, as well as force majeure clauses in the contract, to ensure that the parties can share the risk fairly and reasonably during the performance of the contract. The definition of risk sharing mechanism in ocean engineering contract is of great significance to protect the legitimate rights and interests of both parties and reduce the risks in the process of contract performance.

Before signing the contract, it shall ensure that the qualification of the contract subject is

legitimate, including the construction party, the employer and other relevant parties. Both parties shall have the corresponding qualifications, credit and strength to reduce contract risks. The contents of the contract shall be detailed and specific, specifying the rights and obligations of both parties, including the scope of the project, the quantity of the project, the quality of the project, the progress of the project, the contract price, the method of payment, etc. The parties to the contract need to reduce the risk of misunderstanding or uncertainty by clarifying the contract. Both parties shall jointly formulate a risk list to clarify possible risk types, risk consequences and countermeasures. This helps both parties to the contract to quickly start emergency plans and reduce losses when risks occur. According to the actual situation of the project, the adjustment method of the contract price is agreed, such as fixed total price, unit price, cost plus, etc. At the same time, both parties shall specify in the contract how to deal with engineering changes, claims and other related matters to ensure the rights and interests of both parties during the performance of the contract. Both parties may purchase corresponding insurance products according to the actual situation, such as construction project all risks, installation project all risks, etc., in order to transfer some risks. In addition, security measures, such as performance bonds, guarantors or guarantee companies, may be established to ensure the performance of the contract.

Both parties shall also formulate project quality standards, acceptance procedures and acceptance standards to ensure that the quality of the project meets the requirements of the contract. At the same time, the quality guarantee period and maintenance responsibility are agreed to reduce the risk caused by project quality problems. Both parties shall specify in the contract their legal liability for breach of contract, including the scope of compensation, calculation method, etc. At the same time, agree on dispute resolution methods, such as mediation, arbitration or litigation, so that in the event of a dispute, the settlement mechanism can be quickly activated to protect the rights and interests of both parties. Both parties to the contract shall agree on each other's responsibilities in terms of production safety and environmental protection, and specify the management measures for production safety, environmental protection measures and emergency plans. We need to ensure that the project complies with relevant laws and regulations during the construction process to reduce the risk of safety accidents and environmental pollution.

4.3. The establishment of contract performance supervision mechanism

In order to ensure the effective performance of ocean engineering contracts, it is suggested to establish a corresponding regulatory mechanism, including the process of supervision, evaluation and acceptance of contract performance. At the same time, the introduction of third-party professional body supervision can be explored to improve the transparency and credibility of contract performance.

According to the characteristics of offshore construction contracts, relevant laws and regulations should be improved to clarify the provisions on the conclusion, performance, alteration, rescission and termination of contracts. At the same time, we will strengthen the publicity and popularization of laws and regulations, and raise the awareness of all parties of the law and compliance with the law. Construction administrative departments at all levels shall perform their supervisory duties according to law and strengthen the work of filing, reviewing and supervising Marine construction contracts. Contract acts that violate laws and regulations shall be investigated and dealt with according to law to maintain market order. The contract supervision department shall pay attention to the performance of the contract, and timely discover and correct the problems in the performance of the contract. For the Marine construction contracts of major projects, on-site inspection and special inspection can be adopted to ensure the smooth performance of the contracts. Relevant departments can establish credit records of both parties to the Marine construction contract, reward

enterprises with high integrity, and punish enterprises with low integrity. Through the credit system, enterprises consciously abide by the contract agreement, reduce the contract risk. The industry association should strengthen the service and guidance to the member units, promote industry self-discipline, formulate the model text of the Marine construction contract, and assist the contract parties to avoid risks. At the same time, the industry association can carry out awards and evaluation activities to encourage enterprises to pay attention to contract performance and integrity management.

4.4. Improvement of contract dispute resolution mechanism

For the settlement of disputes in ocean engineering contracts, rapid and efficient dispute resolution mechanisms, such as arbitration, can be considered. This will help reduce the time and cost of contract disputes and protect the legitimate rights and interests of all parties.

The parties to the contract shall specify in the contract the means of dispute resolution, such as mediation, arbitration or litigation. Choosing a dispute resolution method that is suitable for both parties and time-effective helps to reduce the cost of dispute resolution and improve the efficiency of contract performance. It is suggested that relevant departments establish and improve contract dispute mediation institutions to provide professional mediation services. Mediation institutions should have a certain degree of authority and neutrality, so as to facilitate the parties to the contract to trust and accept the mediation results. Arbitration institutions shall enhance the credibility and professionalism of arbitration work, and select arbitrators with rich experience and professional knowledge. Judicial administrative organs and arbitration institutions must strengthen the training and continuing education of arbitrators to ensure the justice and fairness of arbitral awards. For urgent and major offshore construction contract disputes, the establishment of a rapid response mechanism, timely coordination to deal with disputes, avoid disputes escalation, to ensure the progress and quality of the project.

5. Conclusions

Contract management is an important part of Marine engineering management, so it is necessary to combine contract management with the whole Marine project. In order to achieve the established project objectives and ensure the quality and duration of the ocean construction project in principle, it is necessary to strengthen the project and its connection at each stage of the ocean engineering, and at the same time, it is necessary to improve the overall management level of the ocean project and establish an effective project management system. The continuous and stable development of Marine contracts is the result of the continuous improvement of China's market, and it is also the basic code of conduct for enterprises in Marine projects.^[8] The causes of legal risk of Marine engineering contract can be divided into internal causes and external causes: internal causes are caused by the internal management loopholes of Marine engineering enterprises, mainly caused by the defects of their own management system and system loopholes. External causes are caused by changes in the objective environment, including changes in laws, policy adjustments, force majeure or accidents.^[9] The improvement of the dispute resolution mechanism of Marine construction contract is of great significance to protect the legitimate rights and interests of both parties and promote the cooperative relationship. Marine engineering construction should constantly strengthen the management of Marine engineering contract, which not only relies on legal weapons to protect the interests of the parties and guide the parties to perform the contract, but also plays an irreplaceable role in maintaining the order of Marine engineering market in our country. The dispute resolution mechanism of Marine construction contracts has been improved, which is conducive to protecting the legitimate rights and interests of both parties to the contract and

promoting cooperative relations. In actual operation, all relevant departments and units should cooperate to jointly promote the implementation of the dispute resolution mechanism for Marine construction contracts.

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